(10?) (6?) (ERB) March 17, 2003 FILED

Nos. 02-241 and 02-516

IN THE

Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

JENNIFER GRATZ AND PATRICK HAMACHER,

Petitioners,

v.

LEE BOLLINGER, JAMES J. DUDERSTADT, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OUT OF TIME AND BRIEF OF BP AMERICA INCORPORATED AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OUT OF TIME

BP America Inc., by counsel and pursuant to Rule 37, moves for leave to file out of time amicus curiae brief in these cases.

Respectfully submitted,

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BRIEF OF BP AMERICA INCORPORATED AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

INTEREST OF THE *AMICUS CURIAE* [1]

BP America Inc. is the United States subsidiary of BP p.l.c., a corporation organized under the laws of England and Wales (hereinafter collectively referred to as "BP"). As a result of recent mergers between BP p.l.c. and other energy companies from around the world, including Amoco Corp., Atlantic Richfield Co., Vastar Resources, Inc., Veba Oel AG/Aral AG, and Burmah Castrol p.l.c., BP is one of the world's largest publicly held, fully integrated energy, petroleum and petrochemical companies. BP does business in almost all parts of the world. As the U.S. subsidiary of BP p.l.c., BP is the single largest producer of natural gas in North America and holds a significant position in all aspects of the U.S. energy markets ranging from natural gas to oil to refined petroleum and petrochemical products to electric, solar and wind power. BP draws a significant amount of its capital and human resources from the U.S. Significantly, approximately forty-five percent of BP's assets are in the United States, and of BP's 110,000 employees around the globe, over forty percent were recruited or hired from the U.S. As a global leader in this highly competitive industry, BP's university hires are deployed to work in all of our locations around the world.

BP emerged from consolidation among global energy companies as a strong, performance-oriented company com-

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[1] Consents to file amicus briefs have been filed in this court by all parties. This brief was not authored by counsel for any party, in whole or in part, and not person or entity other than amicus curiae and its counsel have made a monetary contribution to the preparation or submission of this brief.

prised of several distinct business cultures. BP has long recognized that the underpinnings of performance lie in the strength, quality and depth of its people while acknowledging the variety of geographies, businesses, locations and cultures that exist within BP today. BP believes that diversity and inclusion is a powerful source of commercial advantage and critical to BP's continued success, both in the United States and abroad. As a result, BP's recruitment process is global and extremely competitive. BP is keenly aware that through its multinational recruiting, it gains knowledge, skills and perspectives essential to success in the global marketplace.

Because BP strongly believes that innovation, one of its core brand values, can only come from encouraging true diversity of styles and ideas while leveraging multiple talents, BP has made diversity and inclusion a strategic focus of its business in the US and around the world. Accordingly, BP's commitment to diversity does not end with its recruitment strategy, but rather transcends all of its business activities. Indeed, active engagement at the top of the company has provided visible leadership for the diversity and inclusion strategy. Educational and mentoring programs; training and awareness activities; cross-cultural competency skill building programs; and gender issues in communication training, in addition to participation in innovative events, such as the first ever global women's conference, has helped to bring BP's strategy to the forefront of its operations.

SUMMARY OF THE ARGUMENT

To be successful in the global marketplace multinational companies like BP must cultivate and maintain a diverse workforce comprised of the most talented and skilled people in the industry. Essential to realizing this goal is the availability of a diverse student body population at U.S. universities and colleges, like the University of Michigan, from which global companies like BP recruit. While BP takes no position

on the constitutionality of the admission practices of the University of Michigan, it believes the University of Michigan and other institutions of higher education should have the discretion to shape admission policies which promote the achievement of diversity so that global companies can continue their efforts to compete and thrive in the marketplace by assembling a diverse and highly skilled workforce there from. BP also urges the Court to consider the importance of diversity initiatives implemented by BP and other global companies when structuring its opinion so that these legitimate business programs may continue.

ARGUMENT

I. WORKFORCE DIVERSITY IS ESSENTIAL TO THE SUCCESS OF MULTINATIONAL COMPANIES

BP is committed to the ideal of meritocracy—employing the best people on the sole criteria of merit. The importance of this goal as part of BP's overall business strategy has increased as competition in the energy industry has both globalized and intensified due to consolidation among large multi-national corporations. As Group CEO John Browne has stated in a June 2002 keynote speech to the Women in Leadership: A European Imperative Conference, held in Berlin,

> People with ideas, with passion, with the ability to deliver, and with the ethical standards which match our aspirations to be a company, which plays a constructive and progressive part in the development of society . . . The people we have form our human capital. To me that is a more important corporate asset than all the plant and equipment, all the oil fields and pipelines. If we can get a disproportionate share of the most talented people in the world, we have a chance of holding a competitive edge. That is the simple strategic logic behind our commitment to diversity and to the inclusion of

individuals—men and women regardless of background, religion, ethnic origin, nationality or sexual orientation.

However, the legacy and changing nature of the energy business affects the ability of BP to attain that goal. This is now a truly global industry and human capital is assessed on a global basis. BP's U.S. operations are but a part of the larger worldwide BP organization, contributing talent in a global talent pool. Further, as an industry based on science and technology that requires professionals from around the world with high levels of education, it is difficult to ignore that historically fewer women and persons of color have pursued careers in the technical sciences and many people, from many different countries and socio-economic backgrounds, have had limited access to technical and scientific educational opportunities. Accordingly, in an effort to meet the goal of meritocracy in a global business context, BP broadens the diversity of its workforce through continuous examination of its internal selection and development processes and adjustment of work practices and company culture, targeting historically under-represented groups such as women, minorities and persons from what BP refers to as "most of the world" outside the U.S. and the United Kingdom.

One of the areas that has been reexamined as part of BP's focus on diversity in the global marketplace for human capital is recruiting. To a large extent, BP and other multinational energy companies rely on the preeminent colleges and universities from around the world to provide them with potential leaders. BP recruits in practically every area of the world for people with the ability to both work and to lead its operations in any country. The University of Michigan is one example of the preeminent institutions of higher education from which BP and other global companies recruit. The U.S. has long recognized that colleges and universities are the training ground for tomorrow's technical professionals and

leaders, and that the "'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples". *Regents of the University of California v. Bakke*, 438 U.S. 265, 313 (1978) (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)). Similarly, the creativity and innovation necessary for global energy companies like BP to succeed and thrive in an increasingly competitive global marketplace is fostered and developed through these same diverse student bodies in institutions of higher education. Recognizing the need to encourage diversity in these institutions, BP endeavors to support organizations within colleges and universities that promote diversity. For example, BP supports organizations such as the National Action Council for Minorities in Engineering, the National Consortium for Graduate Degrees for Minorities in Engineering Science, the National Society for Black Engineers, the Society for Women Engineers and the Mexican American Engineering Society. Fundamentally, however, BP believes it is essential that U.S. universities and colleges have the discretion to create admission policies that encourage and deliver diverse student body populations. While BP takes no position on the issue of whether or not the University of Michigan's admission practices are constitutional, BP believes this Court should not prevent the University of Michigan from considering race, gender or ethnicity in its admission decision, if necessary to foster diversity in its student body population. The global market-place in which BP recruits today demands diversity. Like BP, U.S. colleges and universities must be able to utilize the tools that best prepare its graduates to compete in this global and diverse marketplace for human capital.

II. GLOBAL COMPANIES SHOULD NOT BE HINDERED IN THE PROMOTION OF LEGITIMATE DIVERSITY PROGRAMS

BP is committed to achieving meritocracy so that talented people, regardless of race, gender, or ethnic background, will always have the opportunity to contribute to maximum potential. BP acknowledges the continual need to improve on the progress it has made toward workforce diversity and to ensure that it reaches beyond recruitment into all aspects of corporate culture and policies. To that end BP has created a corporate strategy for fostering diversity and inclusion in the workplace. BP has devoted substantial financial and human resources to achieving the delivery of this strategy. For example, BP invests in people through formal training, development experience and coaching; mutual mentoring; and training in which managers are taught to be open to others and to create environments in which outcomes are more important than styles. Specifically, BP incorporates diversity and inclusion training modules in its First Level Leaders Program, Mid Level Leaders Program, Leadership Enrollment & Alignment Program and self-assessment tools utilized by managers and team leaders. BP respectfully submits that the Court in its decision in this case should not restrict the continuation of legitimate diversity and similar programs implemented throughout corporate America.

Ultimately, BP wants to ensure that its future leaders are drawn from the largest possible pool of talent on the basis of proven ability. As expressed by Group CEO John Browne, the true test of BP's success in this area will come when that leader's appointment is "celebrated without reservation throughout the company by a community of people which has moved beyond prejudice and which has become genuinely inclusive". BP and other U.S. businesses should therefore be permitted to continue to develop and refine programs designed to facilitate the achievement of diversity in the workforce.

CONCLUSION

To be successful in the global marketplace, multinational energy companies like BP must cultivate and maintain a diverse workforce comprised of the most talented and skilled people. University recruiting is an important element in achieving this success. However, because BP acknowledges that it and the industry must go further to achieve diversity, numerous initiatives have been developed by BP and other global businesses that strive to foster and enhance the diversity of workforce talent pool on which these business rely to thrive. BP believes the University of Michigan and other institutions of higher education in the U.S. should have the discretion to shape admission policies that promote the achievement of diversity so that global companies can continue their efforts to compete and thrive in the marketplace by assembling a diverse and highly skilled workforce there from. BP also urges the Court to reaffirm the legitimacy of the important diversity initiatives implemented by BP and other global companies that are essential to achievement and growth in the multinational marketplace they operate in today.

Respectfully submitted,

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